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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,166	01/25/2006	Nagalakshmi Sreekantayya	101174-8	1063

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NORRIS, MCLAUGHLIN & MARCUS, P.A.
875 THIRD AVE
18TH FLOOR
NEW YORK, NY 10022

EXAMINER	
KRAUSE, ANDREW E	

ART UNIT	PAPER NUMBER
4152	

MAIL DATE	DELIVERY MODE
12/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/540,166	SREEKANTAYYA ET AL.	
	Examiner	Art Unit	
	ANDREW KRAUSE	4152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/17/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 6/17/05 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

2. **Claims 4,7,8,10, and 14** are objected to because of the following informalities:

3. Claim 4 recites the limitation "step(i)" in line 1. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 7 recites the limitation "step(ii)" in line 1. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 8 recites the limitation "step(iii)" in line 1. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 10 recites the limitation "wherein in step(iv) the grading of the dried material" in line 1. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 14 recites the limitation "the sensory evaluation of the material in step(v)" in line 1. There is insufficient antecedent basis for this limitation in the claim.

8. Appropriate correction is required.

9.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. **Claims 1-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganesan et al. (USPGPUB 2001/0033880A1) in view of Bishov et al (US#3,852,502) in further view of Dake et al. (US #5,424,082), in light of Null (The antioxidant vitamin).

14. Ganesan discloses a process for treating CTC teas, said process comprising the steps of:

a. Diluting an antioxidant in a suitable medium ([0025])

b. Spraying the antioxidant homogeneously ([0025]) on the fermented tea material in the black tea material in the black tea manufacturing process ([0053], Sample 4).

c. Drying the above material ([0029]).

15. Ganesan fails to disclose that the antioxidant is prepared as an emulsion and packing the tea suitably and storing the packed material.

16. However Bishov discloses that using an emulsion of BHA as an antioxidant in foods (column 4, lines 3-15) and Dake et al discloses packaging and storing beverage

products in LDPE (**claim 11**) under ambient conditions (**claim 12**) (column 4, lines 15-20).

17. It would have been obvious to combine the method of processing tea disclosed by Ganesan with the use of an emulsion of BHA as disclosed by Bishov, because these types of antioxidants are suitable for protecting food products from oxidation (see abstract of Bishov).

18. It would have been obvious to combine the method of processing tea disclosed by Ganesan in view of Bishov with the packaging disclosed by Dake et al., because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results (adding packaging to the processed tea will not change the results of the antioxidant spraying process, and the package will still function as a package) to one of ordinary skill in the art at the time of the invention; furthermore the use of packaging is an obvious modification to foodstuffs as such simplifies the transport, sale and distribution of foodstuff to a consumer.

19. Although Genesan in view of Bishov and Dake does not explicitly disclose that the process will prevent pacha taint, the process will prevent the pacha taint as it recites the elements as claimed. "[T]he discovery of a previously unappreciated property of a

prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

20. Regarding ascorbic acid, it is well known in the art to be an antioxidant compound (See Null, NPL Document 1).

21. **Regarding claim 2,** Bishov discloses diluting the BHA emulsion in water (column 4, line 13.)

22. **Regarding claims 3-6,** Bishov discloses using a synthetic antioxidant, specifically BHA (column 4, lines 5-15), in the range of 0.001 to 0.05 percent by weight (column 3, lines 30-35). Although Bishov does not explicitly disclose the ratio of emulsion of antioxidant to diluting medium, it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the ratio for the intended application, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

23. **Regarding claim 7**, Ganeson discloses using a sprayer to spray the solution, but does not disclose a flow rate. Since the claimed sprayer may be able to spray one liter of solution in 5-8 minutes, it also may not be able to, and therefore, any sprayer will meet the limitations of this claim.

24. **Regarding claims 8 and 9**, Ganesen discloses that the drying step occurs in a fluidized bed drier at 135 degrees C ([0053]).

25. **Regarding claim 13**, since the combination of Ganesen and Dake discloses a process identical to that claimed, the CTC tea obtained by the process will have the same properties as the CTC tea claimed, therefore it will be devoid of Pacha taint when stored up to 10 weeks.

26. **Regarding claim 14**, Ganesen discloses that the tea leaf must yield an acceptable flavor ([0009]). The determination of the flavor's acceptability discloses that the tea undergoes a sensory evaluation. Regarding the sensory evaluation being done by a professional taster/laboratory panel of tasters, since the evaluation 'may' be done in this manner, it also 'may not' be done in this manner, therefore the breadth of this claim encompasses all possible means of sensory evaluation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571)272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/
Examiner, Art Unit 4152

/Joseph S. Del Sole/
Supervisory Patent Examiner, Art Unit 4152